

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF NORTH CAROLINA
CAUSE NO.1:22-cv-1120**

**SHARON KELLY, as Administrator
Of the Estate of CAROLYN PHILBECK**

PLAINTIFF

v.

**ACCORDIUS HEALTH AT
SALISBURY, LLC d/b/a ACCORDIUS
HEALTH AT SALISBURY;
ACCORDIUS HEALTH, LLC;
SALISBURY TWO PROPCO, LLC**

DEFENDANTS

NOTICE OF REMOVAL

COME NOW, Defendants, Accordius Health at Salisbury, LLC, d/b/a Accordius Health at Salisbury; Accordius Health, LLC; and Salisbury Two Propco, LLC, by and through counsel, and hereby give notice of removal of the above-entitled action, which is filed as Civil Action Number 22-CVS-1937 in the General Court of Justice, Superior Court Division of Rowan County, North Carolina, from said Court to the United States District Court for the Middle District of North Carolina. This Notice of Removal is filed pursuant to 28 U.S.C. §1332; 28 U.S.C. §1441; and 28 U.S.C. §1446.

CIVIL ACTION REMOVED

1. Civil Action Number 22-CVS-1937 in the General Court of Justice, Superior Court Division for Rowan County, North Carolina, which is styled “*SHARON KELLY as Administrator of the Estate of CAROLYN PHILBECK v. ACCORDIUS HEALTH AT SALISBURY, LLC d/b/a ACCORDIUS HEALTH AT SALISBURY; ACCORDIUS HEALTH, LLC; SALISBURY TWO PROPCO, LLC*”, is a civil action that was filed on November 18, 2022.

DIVERSITY OF CITIZENSHIP

2. Under 28 U.S.C. §1332(a), diversity jurisdiction exists when a civil action is between citizens of different states and the amount in controversy exceeds \$75,000.00.

3. According to the Complaint, Plaintiff, Sharon Kelly, is the appointed Administrator of the Estate of Carolyn Philbeck (as cited by Plaintiff in File No. 21E209, Cleveland County, North Carolina) and is also, in her individual capacity, a citizen and resident of York County, South Carolina. *See*, Complaint attached hereto as **Exhibit A**. However, the legal representative of the decedent shall be deemed to be a citizen only of the same state as the decedent. 28 U.S.C. § 1332. Thus, for the purposes of this Notice of Removal, Plaintiff is a resident of North Carolina.

4. Defendants Accordius Health at Salisbury, LLC, d/b/a Accordius Health at Salisbury (“Accordius Salisbury”); Accordius Health, LLC (“Accordius Health”); and Salisbury Two Propco, LLC (“Salisbury Two Propco”) are limited liability companies. A limited liability company is a citizen of all states in which one of its members is a citizen. *See, Saxon Fibers, LLC v. Wood*, 118 Fed. Appx. 750, 753 (4th Cir. 2005) (citing *Gen. Tech. Application, Inc. v. Exro Ltda*, 388 F.3d 114, 120 (4th Cir. 2004)).

5. Defendant Accordius Health at Salisbury, LLC, d/b/a Accordius Health at Salisbury is a North Carolina Limited liability company. The company’s sole members are Naftali Zanziper, a resident of New York, and Simcha Hyman, a resident of New York. Therefore, Accordius Salisbury is a resident of New York.

6. Defendant Accordius Health, LLC is a New York limited liability company. Its sole members are Naftali Zanziper, a resident of New York, and Simcha Hyman, a resident of New York. Therefore, Accordius Health, LLC is a resident of New York.

7. Defendant Salisbury Two Propco, LLC is a North Carolina limited liability company. Its sole members are Naftali Zanziper, a resident of New York, and Simcha Hyman, a resident of New York. Therefore, Salisbury Two Propco, LLC is a resident of New York.

8. As a result of the foregoing facts, complete diversity of citizenship exists between the parties as defined by 28 U.S.C. §(a)(1).

FACTS AND CONTROVERSY SUPPORTING JURISDICTIONAL AMOUNT

9. Plaintiff's Complaint alleges that Defendants are liable to Plaintiff under medical negligence and wrongful death claims resulting in personal injuries that were associated with the care provided to Ms. Carolyn Philbeck and resulting in her death while she was a resident of Accordius Salisbury.

10. Plaintiff seeks compensation for alleged injuries that include compensatory damages under claims of medical negligence and wrongful death. *See* Exhibit A at p.6. Plaintiff claims as a result of Defendants' negligence, she is entitled to recover for damages far in excess of \$25,000.00 for decedent's personal injuries. Plaintiff also seeks compensatory damages for the wrongful death of decedent in an amount in excess of \$25,000.00 for the "expenses for care, treatment, and hospitalization... [Ms. Philbeck's] pain and suffering; her reasonable funeral expenses; and her present monetary value to her children." *Id.* Further, Plaintiff seeks to recover punitive damages in an amount in excess of \$25,000.00. *Id.* at 7. Finally, Plaintiff seeks compensatory damages for administrative negligence in excess of \$25,000.00. *Id.*

11. Plaintiff has clearly pled damages in excess of \$75,000.00, and this Court has diversity jurisdiction over this civil action pursuant to 28 U.S.C. §1332. Therefore, this action may be removed to this Court pursuant to 28 U.S.C. §1441.

TIMELINESS OF REMOVAL

12. Accordius Salisbury and Accordius Health were served with process on December 9, 2022. Upon information and belief, Salisbury Two Propco has not yet been served with Process as of the date of this filing. Therefore, thirty days have not elapsed since the first Defendants were served with process or became aware of federal jurisdiction exists, and this removal is timely pursuant to 28 U.S.C. §1446(b).

COPIES OF STATE COURT PROCEEDINGS

13. Pursuant to 28 U.S.C. §1446(a), Defendants have requested and will attach hereto a true and correct copy of all process, pleadings, and orders served upon these Defendants on file in 22-CVS-1937 in the General Court of Justice, Superior Division for Rowan County, North Carolina. *See* Certified Court Record (To Be Supplemented) and attached here to as **Exhibit B**.

NOTICE TO STATE COURT

14. Defendants will immediately file with the Superior Court of Rowan County, North Carolina, a true and correct copy of this Notice, thereby effecting removal of this action to this Court. According to 28 U.S.C. §1446(d), no further proceedings shall be had in Rowan County.

NOTICE TO PLAINTIFF

15. Pursuant to 28 U.S.C. §1446(a) and consistent with the Certificate of Service, Plaintiff is being provided with a copy of this Notice of Removal.

COMPLIANCE WITH FEDERAL RULE OF CIVIL PROCEDURE 7.1

16. Pursuant to Federal Rule of Civil Procedure 7.1, Defendants have filed separate Corporate Disclosure Statements.

Respectfully submitted this, the 21st day of December, 2022.

**ACCORDIUS HEALTH AT SALISBURY,
LLC, d/b/a ACCORDIUS HEALTH AT
SALISBURY; ACCORDIUS HEALTH, LLC;
SALISBURY TWO PROPCO, LLC, Defendants**

By: HAGWOOD AND TIPTON, PC

By: /s/ Michael E. Phillips
Michael E. Phillips (NCSB No. 45198)

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing document on all of the parties to this cause by:

_____ Hand delivering a copy hereof to the attorney for each said party addressed as follows:

 X Depositing a copy hereof, postage paid, in the United States Mail, addressed to the attorney for each said party as follows:

 X Via electronic mail addressed to the attorney for each party as follows:

_____ Depositing a copy hereof with a nationally recognized overnight courier service, for overnight delivery, addressed to the attorney for each said party as follows:

_____ Telecopying a copy hereof to the attorney for each said party as follows:

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This, the 21st day of December, 2022.

/s/ Michael E. Phillips
Michael E. Phillips